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IN THE

Supreme Court of the United States

OCTOBER TERM, 1934

MRS. BIRDIE LOWRY DUNN, ET AL.....Appellants

V.

J. S. LOVE, SUPERINTENDENT OF BANKS, ET AL, ...Appellees

BRIEF OF APPELLANTS OPPOSING MOTION OF APPELLEES TO DISMISS ON THE QUESTION OF JURISDICTION

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JOURNAL, TUPELO

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STATEMENT OF THE CASE

The above cause is before this court by virtue of an appeal from a judgment of the Supreme Court of the State of Mississippi, affirming a decree rendered in said cause by the Chancery Court of Lee County, Mississippi. The decision of the Supreme Court of the State of Mississippi in said cause is found reported in the case of **Dunn, et al, v. Love, et al, 155 So., 331,** to which reference is here made.

The appeal, as shown by the record, is taken under the provisions of **United States Code, Title 28, Section 344, Judicial Code, Section 237,** and amendments, the constitutional issues involved being raised and maintained at all stages in the court below, namely, that the statute in question, as construed by the Supreme Court of the State of Mississippi, and the judg-

ment of said Court impairs the obligations of certain contracts; denied to appellants the equal protection of the laws', and deprives them of their property without due process of law in violation of **p. 1, Sec. 10, of the Constitution of the United States and p. 1 of the 14th Amendment to the Constitution of the United States;** and the protection of said provisions of the United States Constitution was specifically invoked. (Tr._____).

The facts in the case are substantially as follows:

On December 24, 1930 the Peoples Bank and Trust Company of Tupelo, Mississippi became insolvent and was placed under the charge of the State Banking Department for liquidation, as provided by **Chapter 85 of the Code of 1930 of the State of Mississippi (Appendix A),** and remained in process of liquidation until the 15th day of May, 1933 when a petition to reopen the bank in question was filed in the Chancery Court of Lee County, Mississippi, under **Chapter 251 of the Laws of the State of Mississippi 1932, (Appendix B).**

The record shows that when the bank in question closed for liquidation on December 24, 1930, its assets and liabilities were **$2,477,114.78,** with a capital stock of $200,000.00, and a surplus of $75,000.00. (Exhibit I to Petition, Transcript 19.)

The record shows that on May 1, 1933 the bank in question had assets of the stated value of $1,901,672.92 with a deposit liability in excess of $5.00, of $1,311,303.43, and a deposit liability under $5.00 of $3649.87. (Exhibit III to Petition, Transcript 21.)

On the 18th day of May, 1932 the Legislature of the State of Mississippi enacted and passed Chapter 251 of the Laws of the State of Mississippi, 1932, which said statute has as its purpose the reopening of banks theretofore closed by reason of insolvency.

On the 15th day of May, 1933 J. S. Love, Superintendent of the State Banking Department, and certain members of a depositors' committee, acting under the authority of **Chapter 251 of the Laws of the State of Mississippi, 1932,** filed a petition in the Chancery Court of Lee County, Mississippi requesting the court to enter a decree reopening the bank in question, and approve the plan submitted upon which the reopening of the bank in question was to be based. (Tr. 1-25.)

The petition filed discloses an effort to comply with the formal requirements of Chapter 251 of the Laws of the State of Mississippi, 1932, in that it states that (a) more than three-fourths of the general depositors and creditors of the Peoples Bank and Trust Company, or general depositors owning three-fourths of the claims against the said Peoples Bank and Trust Company, have signed what is commonly termed a "freezing of deposits agreement" (Appendix C) under which said agreement the depositors signing agreed to accept repayment of their deposits and claims, over a period of years, the full amount thereof, or in reduced amounts, with or without interest, the period over which the deposits and claims are to be repaid and the rate of payment, together with the interest rate, if any, to be determined by the Superintendent of Banks; that (b) the Superintendent of Banks is convinced that the bank is in a solvent condition and can repay the depositors in accordance with the terms of the agreement and the repayment of same; that (c) incorporated in said petition is the plan upon which the bank is to be reopened; and, finally, (d) attached to the petition is a statement of the assets and liabilities of the bank as of the date of reopening, as is required by **Chapter 251 of the Laws of the State of Mississippi, 1932,** (Tr. 1-25.)

Upon the filing of the petition in question, and in accord-

ance with a part of the prayer thereof, the Chancellor, in vacation, towit., the 4th day of May, 1933, entered an order setting the cause for hearing in vacation on the 15th day of May, 1933, and ordered the clerk of the Chancery Court to issue process for all parties interested by publishing a general notice of said hearing in a weekly newspaper published in Lee County, Mississippi, commanding all the depositors, creditors, and other parties in interest to appear before the Chancellor in vacation at a designated place and time, to show cause, if any they could, why the prayer of the petition in said matter should not be granted, and further ordered the clerk of the Chancery Court to issue personal process on fifteen of the general depositors of said bank, to appear and answer the petition on the day and date designated, which said fifteen depositors were to be considered as a class, such service of process to bind all the depositors and creditors of said bank. Personal service seems to have been obtained on three of the depositors, as shown by the record, the record further showing that some were non-resident corporations of the State of Mississippi (Tr. 25-28).

The appellants in this cause appeared on the day and date designated to answer the petition in question and filed elaborate objections to the granting of the prayer of said petition. In the objections filed, appellants challenged the validity of the entire proceedings, including the validity of Chapter 251 of the Laws of the State of Mississippi of 1932; the validity of the plan submitted upon which to base the reopening of the bank in question; the validity of the process issued and the validity of the procedure adopted as being obnoxious and repugnant to and in violation of certain of the provisions of the Constitution of the United States, in that, Chapter 251 of the Laws of the State of Mississippi, 1932; the plan submitted

under which said bank was to be reopened; and, the entire procedure adopted and followed, impaired obligations of contracts theretofore existing between appellants and the defunct bank in question, in violation of **Section 10, Paragraph 1 of the Constitution of the United States**; deprived appellants of their property without due process of law; and denied to appellants the equal protection of the laws, in violation of **Paragraph 1 of the 14th Amendment, to the Constitution of the United States** (Tr. 77-88).

When the hearing of the cause, upon the petition filed by appellees, and the objections filed by appellants, was concluded, the Chancellor in the court below overruled the objections of appellants and entered a decree authorizing the bank in question to reopen as a new bank, upon the plan or scheme as set forth in the decree (Tr. 89-113).

The decree entered in the cause is in substance as follows:

The bank in question, upon opening, was to charge itself with twenty-five per cent of the amount of deposits and claims due depositors and general creditors of the insolvent bank, as of the date of re-opening, to-wit,

May 15, 1933, with the exception of those deposits and claims under $5.00. As to the balance of the seventy-five per cent of the deposits and claims due depositors and general creditors, such was to be charged out of the bank and the bank was to be released of any further liability for the payment of ~~said~~ same to be charged only against what is denominated as "pool assets" (Tr. 93-94).

Upon the opening of the bank in question, said bank was to pay five per cent of the amount of the original deposits in the insolvent bank to the depositors thereof, the balance of the twenty per cent of same to be paid in succeeding installments

of five per cent whenever collections from the assets carried into the new bank shall equal five per cent of the then outstanding claims and deposits against the new bank (Tr. 93-94.), and as to all deposits and claims under five dollars, the new bank, upon opening, was to pay same in full (Tr. 93-94).

That assets of the insolvent bank of the value of $491,-708.45, of which amount $19,186.44 is represented by secured notes given on account of capital structure of the new bank, is to be set over to the new bank, and carried on its books at a valuation of $216,892.08. The new bank is to collect out of said assets the sum of $216,892.08, and when such sum has been collected, the remainder of the assets are to be transferred to the pool, to be there held to pay the seventy-five per cent of the deposits and claims charged out of the bank. (Tr. 95).

That bonds carried at a value of $81,610.15 in the insolvent bank are to be set over into the reopened bank, after giving effect to capital structure, at a value of $50,000.00, out of which the new bank is to collect $50,000.00, and the balance remaining, after the collection of said $50,000.00, is to be transferred to the "pool assets." That overdrafts of the insolvent bank, in the amount of $4,101.94, are also to be set over to the new bank. That stocks and bonds of the insolvent bank of the value of $37,468.60, are to be set over to the new bank, from which the sum of $7,500.00 is to be collected by the new bank, and the balance transferred to the "pool assets." That all furniture and fixtures of the insolvent Peoples Bank and Trust Company at Tupelo, Rienzi, and Nettleton, Mississippi of the value of $20,000.00, shall be set over unto the new bank at a valuation of $5,000.00, the "pool assets" to receive all amounts over and above the sum of $5,000.00 that may be realized therefrom.

That real estate of the value of $375,723.86, after giving effect to capital structure, is to be set over unto the new bank at a valuation of $68,917.50. That the three bank buildings owned by the bank in liquidation, of the value of $55,000.00, are to be set over unto the new bank at a valuation of $12,500.00, and all sums realized from same, over and above $12,500.00, are to be transferred to the "pool assets." That assets of the value of $1,065,613.00, belonging to the bank in liquidation, or the depositors and general creditors of same, are to be set over unto the new bank at a valuation of $394,880.12, out of which the new bank is to collect the sum of $295,994.02, which it shall retain for its own use (Tr. 95-97). That there is to be set over unto the new bank, all cash on hand belonging to the bank in liquidation as of date of May 1, 1933, to-wit: the sum of $102,302.98 (Tr. 97-99).

That the new bank is to receive all interest collected on the notes and bonds set over unto it until the full principal sum for which said notes and bonds were set over unto the new bank shall have been collected; all dividends and earnings from stocks and bonds until the new bank shall have realized the sum of $7,500.00 from the sale of same; and all rents, issues and earnings from all real estate set over unto the new bank, until the new bank shall have realized the sum of $68,917.50 from the sale of all, or any portion of said real estate, the new bank in return therefor to pay all taxes, insurance, and upkeep on same, all expenses expended in the preservation and upkeep of said property occasioned by acts beyond the control of the reopened bank shall be chargeable against the assets of the pool. (Tr. 98-100).

That in return for the setting over unto the new bank in question the assets heretofore mentioned and other benefits, the new bank assumes a liability to the depositors and general

creditors to the extent of twenty-five per cent of the principal amount due them by the bank in liquidation, to be paid at the rate of five per cent upon opening and the balance of twenty per cent in deferred installments, if and when collected as heretofore set forth in this statement (Tr. 100-101).

That the new bank is to be released from the payment of, or any liability to pay, the seventy-five per cent balance due the depositors and general creditors on their claims, but such balance is to be be paid from the "pool assets" to be collected and held in trust by the new bank and administered under the jurisdiction of the Chancery Court of Lee County, Mississippi with J. S. Love in charge of same as "the agent of the court" there being no definite time stated as to when the collections from the "pool assets" shall be paid to the depositors and general creditors.

That the new bank is to receive as compensation for collecting and handling the "pool assets" in question, ten per cent of all amounts collected on same, except such sums as are collected by the sale of any of the real estate, stocks or bonds belonging to the pool. That the new bank is to be reimbursed for all attorney's fees and court costs expended in collecting the assets of the pool, and preserving same, and all expenses incurred in the protection and preservation of said assets. (Tr. 103-104).

That the new bank shall open with a capital stock of not less than $35,000.00, fully paid in cash, and that all the stockholders of the former insolvent Peoples Bank and Trust Company, who shall pay into the new bank fifty per cent of their stock liability incurred by reason of the closing of the Peoples Bank and Trust Company shall be released of fifty per cent of their stock liability and from any further liability to the depositors and general creditors, as such stockholders of said in-

solvent banking institution, and that the sum of $10,000.00 theretofore paid to the bank in liquidation in excess of fifty per cent of the stock liability of the stockholders therein should be refunded such stockholders and that all judgments theretofore entered against said stockholders of said insolvent Peoples Bank and Trust Company by reason of their stock liability, should be cancelled, and that the original stock held and owned by the stockholders in the insolvent banking institution should be released to such stockholders and any and all securities as may have been taken from such stockholders to secure the payment of the statutory liability incurred by virtue of being stockholders in the insolvent banking institution should be delivered to such stockholders; and that all stock of said insolvent banking institution should be cancelled. (Tr. 107-109).

That additional assets should be set over unto the new bank to provide a surplus to the extent of $35,000.00 and reserve to the extent of $10,000.00, same to be repaid into the "pool" out of the earnings of the reopened bank, all earnings, after the payment of expenses to the amount of $7,500.00 per year, to be paid into the pool for the repayment of said amounts so provided, without interest (Tr. 110-111).

That upon complying with the provisions of the decree, the said Superintendent of Banks and the liquidating agent of the Peoples Bank and Trust Company, are discharged fully and finally in the liquidation of said defunct bank and each of them and their bondsmen are released from any and all liability on account thereof. (Tr. 112.)

It is further adjudicated in the decree that the charter of incorporation of the Peoples Bank and Trust Company has been amended reducing the capital stock from $200,000.00 to $55,000.00; that the interest of all old stockholders of the Peoples Bank and Trust Company at the time it closed for

liquidation has been consumed; that all stockholders in the Peoples Bank and Trust Company in liquidation have been called on for their statutory double liability as provided by law; that the old certificates of stock should be cancelled and surrendered to the proper officers of the corporation; that new certificates be isued to the stockholders in the new or reopened bank; and, that all old stockholders who have not provided the assets for new capital stock, shall have no interest in the assets of the new corporation.

It is further provided in the decree "that all expenses incurred in the liquidation of the Peoples Bank and Trust Company and in the reopening of said bank up to the date of reopening, shall be paid out of the assets taken into the pool, which expenses shall include the cost incurred in this cause, and in any other legal proceedings had in the liquidation, and which expenses are to be a charge against the assets taken into the pool, and should the reopened bank pay any such expenses, it is authorized to be reimbursed therefor from the pool" (Tr. 111).

An appeal to the Supreme Court of the State of Mississippi from said decree was granted appellants in said cause (Tr. 112).

Appellants perfected their appeal to the Supreme Court of the State of Mississippi in the method as required by law, and filed joint and separate assignments of error, the assignments of error setting forth that the decree of the court below, the plan set forth therein for the reorganization of the bank in question, the procedure followed, and the construction placed upon **Chapter 251 of the Laws of the State of Mississippi 1932, by the court violates paragraph 1 of Section 10 of the Constitution of the United States and Section 1 of the 14th Amendment to the Constitution of the United States.**

On June 5, 1934 the Supreme Court of the State of Mississippi entered a judgment affirming the decree of the Chancery Court of Lee County, Mississippi entered in said cause, and said opinion clearly demonstrates the fact that all the constitutional questions and issues were passed upon by said court adversely to the claims of these appellants as to their rights under said provisions of the Constitution of the United States, **(See Transcript; Opinion of Supreme Court of State of Mississippi in Case of Dunn vs Love 155 So. 331).**, said judgment being a final judgment of the highest court of the State of Mississippi and being the court of last resort.

Appellants, in due time, and in the manner as directed by law, filed a suggestion of error permitted under the procedure of the State of Mississippi, and this suggestion of error, necessary to make the judgment of said court final, was overruled by the Supreme Court of the State of Mississippi at the September Term, 1934 of said court.

Appellants then, as required by the rules of this court, prayed for and obtained an appeal to the Supreme Court of the United States, and the Chief Justice of the Supreme Court of the State of Mississippi entered the proper order granting the appeal and bond having been filed and approved, as required, the proper citation for appellees to appear in this court, was issued.

The transcript shows that the procedure for obtaining said appeal was in compliance with the rules of this court and of the statutes made and governing such appeals.

The assignments of error filed by appellants in conjunction with the petition for appeal show that they again raised the constitutional questions and issues in the case, in that they assigned as error that the judgment of the Supreme Court of

the State of Mississippi violates Paragraph 1 of Section 10 of the Constitution of the United States; and, Section 1 of the 14th Amendment to the Constitution of the United States, thereby preserving, at all stages of this cause, the constitutional issues involved.

The statement relative to the jurisdiction of this court and all documents necessary toward the perfecting of this appeal were served upon appellees, and appellees, as the transcript will show, filed their statement setting up facts contending against the jurisdiction of the Supreme Court of the United States to hear and determine this appeal, and simultaneously filed therewith a motion to dismiss said appeal, as permitted by the rules of this court, for the reasons, and upon the grounds stated therein (See Transcript).

In accordance with the rules of this court, appellants herein present this their brief opposing the motion filed by appellees to dismiss this appeal, and setting forth the grounds upon which jurisdiction of this court to hear and determine this appeal is claimed.

BRIEF AND ARGUMENT

I

THE SUPREME COURT HAS JURISDICTION TO REVIEW THE APPEAL IN QUESTION

The Supreme Court of the United States is vested with jurisdiction to review and determine the appeal in this case. The record shows that the appeal is taken under Section 344 of the United States Code; Section 237 of the Judicial Code, as amended, the pertinent provisions of said statute relating

to the jurisdiction of the Court on this appeal being as follows:

"A final judgement or decree in any suit in the highest court of the state in which a decision in a suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn, in question the validity of a statute of any state, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error (now by appeal). The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such state court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

The record in this case clearly discloses that the validity of **Chapter 251 of the Laws of the State of Mississippi of 1932**, was challenged by appellants in all the courts below on the grounds that the state statute in question and the construction placed upon same by the Supreme Court of the State of Mississippi is and was repugnant to the Constitution of the United States, as violating **p. 1 of Section 10 to the Constitution of the United States, and p. 1 of the 14th Amendment to the Constitution of the United States**, the decision of the Supreme Court of the State of Mississippi, the highest court of the State, being in favor of the validity of said statute.

Therefore, it is clear that the jurisdiction of this Court under **Section 344 of the United States Code; Section 237 of**

the Judicial Code, as amended, to review and determine this appeal, is complete.

II

THE MOTION TO DISMISS THE APPEAL SHOULD BE OVERRULED

Under the decisions of this Court, the motion to dismiss the appeal in question must necessarily be overruled.

The record discloses that the motion incorporated in appellees' statement making against the jurisdiction of the Court to review and determine this case upon appeal is a motion to dismiss only without any motion whatever to affirm although conceding that federal questions are involved for decision.

It is well settled by the decisions of the Supreme Court of the United States that where jurisdiction to review a case upon appeal is vested in the Court by virtue of **Section 344 of the United States Code; Section 237 of the Judicial Code,** as amended, a simple motion to dismiss will be overruled where the record discloses that federal questions are presented in the case for review. In fact, under the decisions of this Court, this Court has no authority to dismiss an appeal upon a simple motion to dismiss, where a federal question is presented regardless of other circumstances affecting the federal question, or questions involved. This Court will overrule a motion to dismiss even where it is clear that the federal questions are moot, frivolous, or without substantial merit unless accompanied by a motion to affirm. Even then the

appeal will not be dismissed but by the decision of the highest state court will be affirmed.

Ruckman vs Bergholz 23 L Ed 1008

Evans vs Brown 109 US 180

Walston vs Nevin 128 US 578

It is, therefore, clear that appellees' motion to dismiss must be overruled because of the presence of federal questions in the case, there being no accompanying motion to affirm.

III

THE FEDERAL QUESTIONS PRESENTED ARE SUBSTANTIAL, REAL, AND MATERIAL, INVOLVING PROPERTY RIGHTS OF APPELLANTS, GUARANTEED TO THEM BY THE FEDERAL CONSTITUTION AND WHICH APPELLANTS CLAIM TO HAVE BEEN ABRIDGED BY THE STATUTE AND JUDGEMENT INVOLVED.

The record discloses at each and every stage of the proceedings, appellants challenged the validity of **Chapter 251 of the Laws of the State of Mississippi 1932** and the validity of the decree and judgment on the following grounds:

(a) **That Chapter 251 of the Laws of the State of Mississippi 1932** and the decree and judgment of the Courts below impaired the obligation of certain contracts existing between them and the defunct bank in question in violation of **paragraph I of Section 10 of the Constitution of the United States.**

(b) **That Chapter 251 of the Laws of the State of Mississippi 1932** and the decree and judgment of the

Courts below and the proceedings followed deprived them of their property without due process of law in violation of **paragraph I of the 14th Amendment to the Constitution of the United States.**

(c) **That Chapter 251 of the Laws of the State of Mississippi 1932** and the decree and judgment of the Courts below denies to appellants the equal protection of the laws in violation of **paragraph 1 of the 14th Amendment to the Constitution of the United States.**

It appears to us that even though appellees had filed a motion to affirm, such motion would necessarily be overruled because a mere glance at the above outline in light of the record discloses that the questions are neither moot, without merit, or that same have been previously decided by this Court precluding and rendering unnecessary further decision. On the other hand, the above questions appear to us to be very serious questions when considered in the light of the record before this Court. We shall, however, briefly point out certain admitted facts in the record that preclude any idea that such questions are moot, frivolous, or without merit, and that same have been definitely decided by this court.

(a)

THE CLAIM OF APPELLANTS THAT THE OBLIGATION OF THE CONTRACTS EXISTING BETWEEN THEM AND THE DEFUNCT BANK WAS IMPAIRED IS MERITORIOUS, SUBSTANTIAL, AND REAL.

The record discloses that long prior to the closing of the bank in question by reason of insolvency, these appellants

made their deposits therein thereby bringing into existence the contracts in question and giving rise to the relation of debtor and creditor between themselves and the defunct bank in question. The record further discloses that at the time of the incipiency of the contracts in question, there was a definite code of laws in existence in the State of Mississippi, the situs of the contracts in question, which said code of laws related to banks generally. That said code of laws **(Chapter 85 of the Code of Mississippi 1930; Chapter 82 Hemingway's Code of the State of Mississippi 1917)** fixed the liability of stockholders owning and possessing stock in banks and fixed the liability of such stockholders to the creditors of banking institutions at double the amount of the stock owned and possessed by them. **(Section 3815 Code of the State of Mississippi 1930; Section 3619 Hemingway's Code of the State of Mississippi 1917).** The record further discloses that the judgment of the Supreme Court of the State of Mississippi affirming the decree of the Chancery Court of Lee County, Mississippi in the case relieved all stockholders of further liability to the depositors and general creditors of the defunct banking institution; provided, such stockholders should pay into the new bank 50% of their stock liability incurred by reason of the insolvency and closing of the defunct bank in question; that a sum in excess of $10,000 theretofore collected from such stockholders by the bank in liquidation in excess of 50% of the stock liability of the stockholders therein should be refunded such stockholders; that all judgments theretofore rendered and enrolled against such stockholders by reason of their liability should be cancelled and satisfied; that any and all securities held by the bank in liquidation to secure the payment of the stock liability of such stockholders should be delivered to such stockholders; and, that all the stock of the defunct bank in question should be cancelled.

The record further discloses that real estate of the value of several hundred thousand dollars was set over unto the new bank at a value far under its real value and that the new bank in question was to receive the rents and income from same of whatever nature for its own use and that stocks and bonds of the value of many thousand dollars were set over unto the new bank at a value far less than their actual value, the new bank to receive all income therefrom for its own use. The record further discloses that the sum of $102,302.92 in cash in the possession of the bank in liquidation is to be turned over to the new bank, and that assets of the value of $1,065,613.00 belonging to the bank in liquidation are to be turned over to the new bank in question out of which assets the new bank in question is to collect the sum of $295,994.02 to be retained by and used by it. The record discloses many other items similar to the above but for the sake of brevity we will dispense with calling the attention of the Court to same.

We, therefore, respectfully submit that the appellants under the contracts in question had a right to look to the double liability of the stockholders and to the assets of the defunct bank in question for the payment of their deposits and claims and that the release of the stockholders of the defunct bank in question of all, or any part, of such liability and the setting over unto the new bank in question of assets in excess of one million dollars and the cancellation of judgments enrolled against such stockholders impaired the obligation of the contracts existing between the defunct bank in question and the appellants, (its depositors,) and the authorities so hold.

It is well settled under the law that all laws which exist at the time and place of the making of a contract and where it is to be performed enter into and form a part of it. This

embraces those laws which affect its validity, construction, discharge and enforcement.

Walker vs Whitehead 16 Wallace 314.

It is further well settled that the obligation of a contract is the law which binds the parties to perform same.

Sturges vs Crowinshield 4 Wheatley 197.

It is further well settled that any law that releases any part of the obligation of a contract, abridges same, or dispenses with expressed conditions therein impairs the obligation of same.

Green vs Biddle 8 Wheatley 84.

It is further well settled that the amount of the impairment of the obligation is immaterial. If there be any, it is sufficient to bring into activity the constitutional provisions and the judicial power of the court to redress the wrong.

Farrington vs Tennessee 95 US 683.

It is well settled by the authorities that the remedies provided for the enforcement of contracts in existence at the time of the execution of same enter into and form a part of its obligation and any law of the state, or judicial action that lessens, or materially alters same, or destroys same, impairs the obligation of the contract and is void.

McCracken vs Hayward 11 US 1.
Bronson vs Kinzie 1 How. 311.
Cooley Cons. Lim. Vol. 1 592.
Rees vs Watertown 29 L Ed 72.
Walker vs Whitehead 16 Wallace 314.
Barnitz vs Beverley 163 US 122.
Green vs Biddle 5 L Ed 547.

It is well settled that impairment of the obligation of a

contract by judicial decision falls within the constitutional prohibition.

Pine Grove vs Talcott 19 Wallace 666.
Swift vs McPherson 232 US 51.
Ohio Life Insurance Co. vs DeBolt 16 How. 432.

We, therefore, respectfully submit that under the above authorities when applied to the admitted facts in the record as set out above, the obligation of the contracts existing between the appellants and the defunct bank in question were impaired. To say the least, such a question is substantial, real and material, as it clearly appears that the value and force of the obligation of the contracts in question were lessened; the remedies provided for the enforcement of same were taken away from appellants; and, vested rights were nullified.

(b)

THE CLAIM OF THE APPELLANTS THAT CHAPTER 251 OF THE LAWS OF THE STATE OF MISSISSIPPI OF 1932, AND THE DECREE AND JUDGMENT THEREUNDER DEPRIVES THEM OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW IS MERITORIOUS, SUBSTANTIAL AND REAL.

The record discloses that the process issued in this case was issued under order of the Chancellor, commanding all interested persons to appear in vacation on a day certain to show cause, if any they could, why the prayer of the petition filed in the case should not be granted. A general notice of such hearing was ordered published in a weekly newspaper published in Lee County, and personal summons was ordered to be issued upon fifteen interested creditors of the insolvent bank in question, who should be considered as a class.

There is no Statute of Mississippi authorizing a Chancellor to formulate an independent scheme of notice, or process. **Chapter 58 of the Code of the State of Mississippi, 1930,** is the process statute, and provides for summons and publication in various cases. **Section 2965 of the Code** provides that a summons shal not issue in any case, at law or in chancery, until the declaration, bill, petition, or other pleading beginning the cause, shall be filed. The process to bring in defendants at law and in chancery, shall be a summons and it shall command the officer to summon the defendant to appear and answer on the return day. **Section 2969** provides for summons in cases in chancery to be made returnable on a rule day in vacation, sufficiently distant in time to admit of due service thereof, or on the first day of the next regular day, etc. **Section 2972** provides for a summons by publication in a proceeding in the chancery court, where it is shown by affidavit filed, that a defendant is a non-resident of the state, or not to be found therein, and in such case the clerk shall promptly prepare and publish a summons to such party to appear and defend the suit on a rule day in vacation, or on the first day of the next regular term, if thereby the answer of the defendant would be the earlier required. **Section 2973 of the Code of the State of Mississippi of 1930,** provides how unknown and non-resident defendants may be brought into court. **Section 2977** thereof provides for a substitute publication when newspapers will not publish the notice for the compensation provided by law. **Chapter 143 of the Laws of the State of Mississippi, 1932,** relates to the setting of causes in chancery for hearing in vacation, and the summons required to be issued to give notice to interested parties of such hearing.

A careful reading of the whole statute on process will

show that the publication here made was not authorized by any statute of the State of Mississippi. It is necessary for a statute to prescribe how such process shall issue and this must be found in the law itself. **Chapter 251 of the laws of the State of Mississippi, 1932,** does not provide anywhere for the giving of notice to the depositors and creditors; for the issuance of summons; or for the issuance of any process. Therefore, it is clear that there was no statute of the State of Mississippi in force and effect authorizing the scheme of process as formulated by the Chancellor in this cause. A chancellor cannot take the place of the Legislature; such authority cannot be delegated and there has been no attempt to delegate it in the manner in which it is attempted to be exercised in this case.

Pennoyer v. Neff, 95 U. S., 714.

It is well settled by the authorities that due process of law means that a citizen must be accorded a hearing in a legal manner, according to the principles of jurisprudence in force and effect relating to the hearing, which includes a procedure conforming to the maxims of the law regarding same.

Due process of law requires that an interested party must be notified of the hearing by a method of process found in some statute authorizing same, and any proceeding based upon process unauthorized by any law, wherein a citizen is deprived of his property, results in such citizen being deprived of his property without due process of law as guaranteed to him under **P. 1 of the 14th Amendment to the Constitution of the United States.**

Inasmuch as the record clearly discloses the fact that these appellants, depositors in the defunct bank in question, were deprived of their property, both real and personal, in the amount of several hundred thousand dollars, including

stockholders liability, judgments, and the right to pursue same in satisfaction of their claims, and inasmuch as the record discloses that the notice given to these appellants of the hearing of this cause was upon process unauthorized by any statute existing in the State of Mississippi, we respectfully submit that such statute, as it provides for no notice whatever, violates **p. 1 of the 14th Amendment to the Constitution of the United States,** and as the Chancellor had no authority to formulate the scheme of process issued in question, all proceedings had thereunder are void and of no effect, and inasmuch as certain valuable property rights were destroyed and a considerable amount of property was taken from these appeallants under the decree and judgment of the courts below, such is tantamount to depriving these appellants of their property without due process of law in violation of **p. 1 of the 14th Amendment to the Constitution of the United States.**

J. J. Newman Lumber Company v. Pace, 137 Miss, 504.
Y. & M. V. R. R. Company v. Lawler, 130 Miss., 421.
Ponder v. Martin, 119 Miss., 156.
Burton v. Pepper, 116 Miss., 139.
Coe v. Armour Fertilizer Company, 237 U. S., 413.
Stuart v. Palmer, 74 N. Y., 183.
Paulsen v. Portland, 149 U. S., 38.
Bonslog v. City of Gulfport, 112 Miss., 184.
Dunn v. Love (dissenting opinion) 155 So., 335.

We, therefore, respectfully submit that the question that appellants were deprived of their property without due process of law in violation of **Paragraph 1 of the 14th Amendment to the Constitution of the United States** is material and substantial.

(c)

THE CLAIM OF APPELLANTS THAT CHAPTER 251 OF THE LAWS OF THE STATE OF MISSISSIPPI, 1932, AND THE JUDGMENT OF THE COURT BELOW DENIED THEM THE EQUAL PROTECTION OF THE LAWS IS MERITORIOUS, SUBSTANTIAL AND REAL.

A reference to Chapter 251 of the Laws of the State of Mississippi, 1932, at once discloses that certain depositors and common creditors of the defunct bank in question, are denied equal protection of the laws under same. The statute provides that correspondent banks, although general creditors, are to be paid in full, while depositors, also general creditors, are to be paid in such manner as seventy-five per cent of the depositors and creditors of such defunct banking institution, or depositors and creditors owning seventy-five per cent of the claims against said defunct banking institution, shall decide. This is clearly a discrimination based upon no classification whatever, whether reasonable or otherwise.

Correspondent banks and depositors are mere general creditors of insolvent banks, and there is no valid reason why one class of general creditors should be paid in full and another class only partially, especially where the partial payment is attempted to be forced upon general creditors not consenting thereto.

The decree and judgment of the court below is in a similar situation. A reference to the decree in question shows that creditors holding cashier's checks were ordered paid in full, although mere general creditors, and depositors whose accounts were under $5.00, were ordered paid in full, although mere general creditors, while all non-assenting depositors, whose accounts exceeded $5.00, are compelled to accept a cer-

tain per cent of their claim, part in cash and the balance in installments.

It appears to us that this denies to appellants the equal protection of the law, in violation of **p. 1 of the 14th Amendment to the Constitution of the United States.** It is well settled that equal protection of the laws requires equal operation of the laws upon all persons in like circumstances, and this requirement may be abridged by expressed statutory enactment or by improper execution through duly constituted agents, and where classification is attempted to justify a seeming discrimination, such classifcaton must be reasonable and bear a just relaton to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.

Maxwell v. Bugbee, 250 U. S., 525.
Buchanan v. Marley, 245 U. S., 60.
Sunday Lake Iron Company v. Wakefield, 247 U. S., 350.
Royster Guano Company v. Virginia, 253 U. S., 412.
G. C. & S. F. R. R. Company v. Ellis, 165 U. S., 150.

It is clear, therefore, that these appellants were denied the equal protection of the laws, both under the statute itself and the decree and judgment of the courts below. The common depositors and the common creditors are compelled by statute to accept whatever either three-fourths of the number of creditors agree for them to accept, or, in the alternative, whatever a lessor number having three-fourths of the credits involved, determine is best for them to take; whereas, the correspondent bank, although a simple creditor, and having a simple demand, not secured by collateral or pledges, is not compelled to accept such settlement.

The terms must be acceptable to such banks and they may

prevent, at their will, a scheme from becoming effectual until they have been paid in full, as seems to have been done in the present case. By the very terms of the act itself, it is not to apply to all persons in the same situation, but as to public depositors, or those depositors and creditors holding preferred claims or secured claims, or correspondent banks, although holding no preferred claims and no securities, the act shall not apply at all.

It favors a bank which is a common creditor, having checks and other obligations or collections with the bank, when it closes, guaranteeing to it favors at the expense of all others. To say the least, such question is a substantial, material, and real federal question, viewed in the light of the record before this court.

It seems to us that the violation of the constitutional provisions as set out above, on the facts as they exist in this case, is too clear for doubt. To say the least, such questions are material, substantial and real federal questions.

CONCLUSION

Inasmuch as this court, on a motion to dismiss, will not inquire into the merits of the cause (**Bohannon v. Nebraska, 118 U. S., 231**), but will only go so far as to determine for itself whether the federal questions presented are substantial, material and real, we respectfully submit that the motion to dismiss must be overruled as the record shows that the federal questions presented are material, substantial and real, and even though, if it were a case of moot, insubstantial or settled

federal questions, the ~~motive~~ motion would still be overruled, as there is no accompanying motion to affirm.

We respectfully submit that the motion to dismiss the appeal in question should be overruled.

Respectfuly submitted:

E. C. SHARP,

GEO. T. & CHAS. S. MITCHELL,

By_____

Attorneys For Appellants.

CERTIFICATE

I, Charles S. Mitchell, one of the attorneys for appellants, do hereby certify that I have served a true and correct copy of the above and foregoing brief upon C. R. Bolton, Tupelo, Mississippi, and Messrs. Creekmore and Creekmore, Jackson, Mississippi, and Flowers, Brown and Hester, Jackson, Mississippi, attorneys for appellees.

Witness my signature on this the_____ day of December, 1934.

_____

Attorney For Appellees.

CSM:k 12-14-34.

APPENDIX

(a)

Section 3817, Mississippi Code. Liquidation proceedings. —In liquidating the affairs of insolvent state banks taken over by him, the superintendent of banks shall proceed by first filing a petition in the chancery court of the county in which the bank is located, submitting the liquidation of such bank to the jurisdiction of that court and thereafter the liquidation shall proceed under the orders and directions of that court The chancery court or the chancellor in vacation shall have full jurisdiction to make any and all orders in the course of the liquidation proceedings. The case shall be styled "in the matter of the liquidation of the_____of the _____bank by_____superintendent of banks," and when the board of directors of the failed bank have passed a resolution, consenting to the liquidation of the bank, and requesting the superintendent of banks to take charge of its affairs for the purpose of such liquidation and authorizing an officer of the bank to waive service of process and enter the appearance of the bank to the petition, the superintendent of banks shall thereafter have full and complete control and authority over the assets and affairs of the failed bank, subject only to the orders of the chancery court to which jurisdiction of the liquidation has been submitted. Suit may be instituted by him in his name as superintendent of banks to enforce the collection of any bill or other obligation due the failed bank or to preserve the assets thereof or to enforce any right at law or in equity that might or could have been enforced by the bank as a going concern. And he may employ and retain such of the employees of the bank as he may deem necessary to aid him in the liquidation. By and with the con-

sent of the court or of the chancellor in vacation evidenced by an order in the liquidation proceedings he may sell any of the property, real, personal or mixed, belonging to the bank either at private or public sale, and a deed made by him under the seal and attested by the secretary of the state banking department shall convey to the purchaser all of the rights, title and interest of the bank and of the state banking department in any such property.

The superintendent shall cause notice to be given by advertisement in such newspaper as he may direct, once a week for six consecutive weeks, calling on all persons who may have claims against the bank (but not including deposits shown by the books of the bank which shall prima facie be proven claims) to present the same and make legal proof thereof, at a place and within a time specified in such notice, not less than ninety days from the date of the first publication of the notice. A copy of the notice shall be mailed to all persons whose names appear as creditors on the books of the bank. If the superintendent doubts the justice and validity of any claims or deposits, he may reject the same and serve notice of such rejection upon the claimant or depositor, either by mail or personally, and an affidavit of service of such notice, which shall be prima facie evidence thereof, shall be filed in the office of the banking department. An action upon a claim so rejected must be brought by petition to the chancery court having jurisdiction of the liquidation of the affairs of the bank by the claimant within six months after such service or the same shall be barred. Claims presented and allowed after the expiration of the time, fixed in the notice to creditors, shall be entitled to share in the distribution, only to the extent of the assets in the hands of the superintendent at the time claims are filed, without allowance for previous distribution. Upon taking possession of the property and assets of

a bank, the superintendent shall make an inventory of its assets in duplicate, one to be filed in the office of the banking department, and one in the liquidation proceedings in the chancery court. Upon expiration of the time fixed for the presentation of claims, the superintendent shall make in duplicate a full and complete list of the claims presented, including and specifying which claims have been rejected by him, one to be filed in the office of the banking department and one in the liquidation proceedings in the chancery court. Such inventory and list of claims shall be open at all reasonable times to inspection. The compensation of the special agents of the banking department, counsel and other employees and assistats and all expenses of supervision and liquidation shall be fixed by the superintendent subject to the approval of the chancery court, or the chancellor in vacation. When the compensation for the various parties aiding in the liquidation is fixed and approved the same shall be paid out of the funds of such bank in the hands of the superintendent and shall be a prior charge and lien on such assets. The money collected by the superintendent shall be, from time to time, deposited in one or more state depositories. At any time after the expiration of the date fixed for the presentation of claims, the superintendent may, out of the funds remaining in his hands, after the payment of expenses, declare and pay one or more dividends to creditors, and as soon as practicable thereafter, he shall declare and pay a final dividend, such dividend to be paid to such persons and in such amounts and upon such notice as may be directed by the chancery court having jurisdiction of the liquidation. Objections to any claims or deposits not rejected by the superintendent may be made by any party interested, by filing a copy of such objections with the superintendent, who shall present the same to the court having jurisdiction before the time of the next application to declare

a dividend. The court may make proper provisions for unproven or unclaimed deposits. When the superintendent shall have paid to each and every depositor and creditor of such bank whose claim or claims shall have been duly proven and allowed, the full amount thereof, and shall have made proper provision for unclaimed and unpadi deposits, or dividends, and shall have paid all the expenses of liquidation, all out of the assets of the failed bank, and there still remains in his hands any assets thereof, he shall call a meeting of the stockholders of such bank by giving thirty days' notice by publication once a week for three consecutive weeks in one or more newspapers published in the county where the principal office of such bank was located. At such meeting the stockholders shall elect by ballot an agent or agents who shall wind up the affairs of the bank, and in so determining such stockholders shall vote by ballot, in person or by proxy each share of stock entitling the holder to one vote and the majority vote of the stock shall be necessary to an election, a majority of the stock present and voting in person or by proxy being necessary Such agent or agents shall execute and file with the banking department a bond in such amount with such security and in such form as shall be approved by the superintendent of banks conditioned for the faithful performance of all the duties of all the duties of his or their trust, and so conditioned that any party aggrieved may bring or cause to be brought suit on said bond, and thereupon the superintendent shall transfer and deliver to such agent or agents all the undivided and uncollected or other assets of such corporation then remaining in his hands and take a receipt therefor by such agent or agents, and upon such transfer and delivery shall be discharged from any and all further liability to the bank and its creditors. Such agent or agents shall convert the assets coming into his or their possession into cash, and shall act for and make distribution of

the property of said bank as is herein provided in case of distribution by the banking department ,except that the expense thereof shall be subject to the direction and control of the court having jurisdiction of the cause. In case of the death, removal or refusal to act of any such agent or agents selected by the stockholders, the stockholders, on the same notice to be given by the superintendent upon proof of such death, removal or refusal to act, being filed with him, and by vote hereinbefore provided, may elect a successor who shall have the same powers and be subject to the same liabilities and duties as the agent originally elected. Dividends and unclaimed deposits remaining unpaid in the hands of the banking departmet for six months after the order for final distribution (at such rate of interest as is allowed by said state depositories) shall be by him deposited in one or more state depositories to the credit of the banking department in trust for the several depositors in and creditors of the liquidated bank from which they were received, and the superintendent shall pay over the money so held by him to the persons respectively entitled thereto upon being furnished satisfactory evidence of their right to same. In case of doubtful or conflicting claims, he may require an order from the court having jurisdiction authorizing and directing the payment thereof. He may apply the interest earned by the money so held by him toward defraying the expense in the payment and distribution of such unclaimed deposits or dividends to the depositors and creditors entitled to receive the same. The banking department shall file annually with the governor of this state a report of the names of the banks taken possession of and liquidated and the sum of unclaimed and unpaid deposits or dividends with respect to each of them respectively, together with a statement of the amount of interest earned by such unclaimed dividends, which reports the governor must submit to the legislature.

In event the assets of the failed bank are not sufficient to pay the claims of all creditors and depositors in full, then in such event, when the superintendent shall have realized on all of the assets of such bank, and has applied the same toward the payment of such claims in the manner provided by law, he may file with the chancery court having jurisdiction of the liquidation a final report and upon the approval and allowance of this report he shall be discharged from any further liability to the bank and its creditors, except as to the right of depositors to be paid any remaining balance due them out of the guaranty fund as provided by law.

(b)

Section 3815, Mississippi Code. Stockholders—liability of.—The stockholders of every bank shall be individually liable, actually and ratably, and not for one another, for the benefit of the depositors in said bank to the amount of their stock at the par value thereof, in addition to said stock; but persons holding stock as executors, administrators, guardians, or trustees shall not be personally liable as stockholders, but the assets and funds in their hands constituting the trust shall be liable to the same extent as the testator, intestate, ward or person interested in such trust fund would be, if living or competent to act; and persons holding stock as collateral security shall not be personally liable as stockholders, but the person pledging such stock shall be deemed the stockholder and liable under this section. Such liability may be enforced in a suit at law or in equity by any such bank in process of liquidation, or by the superintendent of banks, or other officer succeeding to the legal rights of said bank.

Chapter 251, Laws of the State of Mississippi, 1932, is as follows:

(c)

Section 1. **Be it enacted by the Legislature of the State of Mississippi,** That the Superintendent of Banks of the State of Mississippi be authorized to reopen any closed bank, with the approval of the Chancery Court of the county in which the bank is situated, or of the Chancellor in vacation, when at least three-fourths of the general depositors and creditors therein, or any number of the general depositors and creditors therein provided they own at least three-fourths of the deposits in or claims against such bank, agree to the reopening thereof and sign what is commonly termed a "freezing-of-deposits agreement", under which they agree to accept repayment of their deposits and claims over a period of years, for the full amount thereof or in reduced amounts, with or without interest, the period over which the deposits and claims are to be repaid and the rate of payment, together with the interest rate, if any, to be determined by the Superintendent of Banks, provided the Superintendent of Banks is convinced that such bank is in solvent condition and can repay the depositors the amounts of their deposits in accorddance with the terms of the agreement for the repayment of same. But, before any such bank shall be reopened, the entire plan for the reopening of same, and all facts in connection therewith, shall be submitted by the Superintendent of Banks to the Chancery Court of the county in which the bank is situated, or to the Chancellor in vacation, by proper petition, duly verified, such petition to contain a statement of the assets and liabilities of the bank and such other information as may be necessary to convey to the court or Chancellor the true facts with reference to the condition of such bank, and a decree of the court or of the Chancellor in vacation obtained approving the plan agreed upon for the reopening of such bank and authorizing the same to be reopened.

Section 2. When any closed bank has been reopened as herein provided, the general depositors and creditors thereof who have not expressly agreed to accept the repayment of their deposits and claims in accordance with the freezing-of-deposits plan shall be bound to accept repayment of their deposits and claims on the same basis and at the same rate as those general depositors and creditors who have signed the freezing-of-deposits agreement, but this shall not apply to public depositors or to those depositors and creditors holding preferred claims, or secured claims, nor to correspondent banks holding bills payable of the closed bank. Proper provision must be made in the plan for the reopening of such bank to pay public depositors, depositors and creditors holding preferred claims and secured claims, and correspondent banks, on terms acceptable to them, but any arrangement so made shall not operate prejudically to the rights of the general depositors and creditors of the bank.

Section 3. That this Act shall not be construed to give the Superintendent of Banks the right to diminish the assets of a closed bank to the prejudice of the depositors and creditors thereof, and any assets that may be charged out as doubtful or as losses shall be held by the bank and collected for the benefit of its depositors and creditors, and all amounts so collected shall be held by the bank to be paid to them in accordance with the agreement for the repayment of their deposits and claims.

Section 4. That this act shall be in force from and after its passage.

Approved May 18, 1932.

(d)

Depositors Agreement, Peoples Bank & Trust Company, Tupelo, Mississippi:

I, or we_____being a depositor of the Peoples Bank & Trust Company, of Tupelo, Mississippi, in the hands of J. S. Love, Superintendent of Banks, in charge of the liquidation thereof, as follows:

(1) Savings Account $_____

(2) Checking Account $_____

Total $_____

In consideration of the reopening of said bank and the benefits to accrue to me, or us, by virtue thereof, hereby agree as follows:

1) That said bank may be reopened under and subject to such plans as may meet with the approval of J. S. Love, Superintendent of Banks, the Chancery Court of Lee County, or the Chancellor (in vacation) and the directors of the Peoples Bank & Trust Company.

(2) That I, or we, are to receive 25 per cent of such balance as follows:

(a) 5 per cent of the original amount (or 20 per cent of the depreciated amount) as of date of reopening.

(b) Balance to be paid in installments whenever collections have been made from the assets taken over from the closed bank shall equal 5 per cent of the present outstanding deposits. All deferred payments are to be without interest.

(3) That the remaining 75 per cent of my, or our, balance or credit is to be charged to my or our account, and set up in a special account to benefit from a trust fund hereinafter provided.

(4) That the Superintendent of Banks is to make an examination of the bank, and is to put into the reopened bank a sufficient amount of the assets of the bank now in liquidation to insure the collection therefrom of sufficient funds to pay to the depositors and creditors of the bank now in liquidation the 25 per cent of their deposits and claims, which are to be assumed as a liability by the reopened bank, and the remainder of the assets of the bank now in liquidation are to be charged out of the bank and carried into a special fund known as "Pool Assets," to be managed and collected by the reopened bank for my or our benefit and distributed pro rata, after a sufficient amount has been collected from the present assets of the bank to pay all depositors and creditors 25 per cent of their claims.

(5) That the said special fund designated as a pool and the assets from which it is derived is to be administered and distributed by the re-opened bank, under the jurisdiction of the Chancery Court of Lee County, Mississippi, as a trust fund, and subject to the supervision of the Superintendent of Banks, and the said re-opened bank is to receive for the handling and collection of same 10 per cent of the amount which it collects, plus any Attorney's fees and court costs incurred.

(6) It is further agreed that the Peoples Bank & Trust Company is to be re-opened with not less than $35,000.00 capital stock fully paid in cash, and in consideration of the benefits to accrue from the re-opening the undersigned, as a depoistor or creditor, does hereby agree that such of the stockholders in the Peoples Bank & Trust Company as shall pay in cash to provide the capital stock for the re-opened bank—50 per cent of the amount of their stock in the Peoples Bank & Trust Company at closing, shall be relieved and released from further liability to the depositors of the bank in liquida-

tion, but that such stockholders as do not pay 50 per cent of their stock into the capital of the re-opened bank shall remain liable for the full amount of their stock liability, and which shall become part of the assets known as the pool, to be administered as a trust herein above provided.

(7) Nothing in this agreement is to be constructed as relieving the stockholders in the re-opened bank from any liability under the law upon stockholders in anything that may occur in the operation of the re-opened bank.

(8) I hereby authorize the Superintendent of Banks of the State of Mississippi, with the approval of the Chancery Court of Lee County, to act for me in further consummating the re-opening of the Peoples Bank & Trust Company, and in making contracts with the re-opened bank in conformity with this agreement.

Witness my signature, on this the_____day of _____1933.

_____

Witness:

_____

To The Honorable Chancery Court of Lee County, Miss.
and

Honorable J. S. Love, Superintendent of Banks of the State of Mississippi.

The undersigned Depositor in the Peoples Bank and Trust Company of Tupelo, Mississippi hereby respectfully petition that said bank be reopened in accordance with the agreement which I have signed on the reverse hereof, which plan has been approved by the Depositors' Committee of said bank.

_____